

# The Gazette of India



EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

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No. 122] NEW DELHI, THURSDAY, MAY 27, 1954

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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 10th May 1954

**S.R.O. 1678.**—Whereas the elections of Shri Krishna Chandra Tara Chand Sharma and Shri Pyarelal Khuman, as members of the Legislative Assembly of the State of Madhya Pradesh, from the Khurai Constituency of that Assembly, have been called in question by an Election Petition (No. 19 of 1953 before the Election Commission) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Gayaprasad son of Shri Mathraprasad of Sagar, Diwalanaka, District Sagar (Madhya Pradesh);

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, JABALPUR: AT SAGAR

PRESENT:

- (1) Shri G. A. Phadke, B.A., LL.B.—*Chairman*.
- (2) Shri R. D. Doongaji, B.A., B.Sc., LL.B.,—*Member*.
- (3) Shri G. L. Shrivastava, M.A., LL.B.,—*Member*.

ELECTION CASE No. 1 OF 1953

Gayaprasad son of Mathraprasad of Diwalanaka, Sagar—*Petitioner*.

*Versus*

1. Shri Krishanchand Sharma.
2. Shri Pyarelal Ladhia.
3. Shri Keshao Rao.
4. Shri Khemchand.
5. Shri Ramlal.
6. Shri Sidhyanath.—*Respondents*.

ORDER

Passed this the 26th day of April, 1954

The Petitioner Gayaprasad, one of the candidates who had contested the bye-election to the seat reserved for the Scheduled Caste candidate in the Khurai

Constituency of the Legislative Assembly of the State of Madhya Pradesh, presented his election petition, calling in question the said bye-election held on the 31st May 1953, on several grounds.

2. This was a double member Constituency from which the Respondent No. 1, Krishnachandra Sharma was elected to the General Seat and the Respondent No. 2 to the other seat, reserved for the Scheduled caste. The other Respondents, viz., 3 to 6, were the remaining nominated candidates. The Petitioner, the Respondent No. 2 and the Respondent No. 4 had contested the seat reserved for the Scheduled caste and the others had contested the General Seat. The Respondent No. 4 Khemchand and the Respondent No. 6 Sidhnath had withdrawn from the contest. The number of votes polled by each of the contesting candidates were as under—

Shri Gayaprashad—Petitioner . . . . .	5730
Shri Krishnachandra—Respondent 1 . . . . .	8942
Shri Pyarelal (Sch. Caste), Respd. 2 . . . . .	7100
Shri Kesho Rao Khandekar, Respd. 3 . . . . .	5983
Shri Ramlal—Respondent 5 . . . . .	5915

3. The grounds on which the election was questioned were as under:—

*Against Respondent No. 1*

- (1) That he had bribed the voters.
- (2) That the voters were induced to believe that they would become an object of divine displeasure if they did not vote for the Respondent No. 1.
- (3) That the voters were carried in a hired vehicle to a polling booth.
- (4) That the votes were canvassed within the area of the Polling Station on the date of Polling, and
- (5) That the Return of the Election Expenses was false;

*and against Respondent No. 2*

- (1) That his Nomination Paper was improperly accepted.
- (2) That he had bribed the voters, and
- (3) That a systematic appeal to vote on the ground of caste, coupled with a threat of excommunication was made.

The election as a whole was questioned on the ground that the Electoral Rolls on the basis of which the said bye-election was held, were not prepared in accordance with the law or the Rules made thereunder with the result that the result of the election as a whole was materially affected.

4. The main contesting respondents were the Respondents 1 and 2. They had denied almost all the allegations made in the Petition on the basis of which the bye-election was sought to be set aside. The Respondents 4 and 6 were formal Respondents to these proceedings and they had admitted the allegations made by the petitioner. Respondents Nos. 3 and 5 did not put in their appearance at all and the Respondents Nos. 4 and 6 also remained absent after they had filed their written statement. The trial, therefore, proceeded *ex-parte* against the Respondents 3 to 6.

5. The following issues were fixed for trial:—

<i>Issues</i>	<i>Findings.</i>
1. Is the Khurai Constituency of Sagar District	
(a) a Plural Member Constituency? or . . . . .	Yes.
(b) was the election to the General Seat and the election to the Scheduled Caste seat one, or	Not necessary.
were they two independent elections ?	
(c) Is the petition in time ? . . . . .	Yes.

Issues

Findings

2. Were the Electoral Rolls on the basis of which the election was held not prepared in accordance with law in so far as :—
  - (i) The Electoral Roll of 1950 was not kept intact ?
  - (ii) No list of amendment showing the names of persons excluded from the Electoral Roll of 1950 was published ?
  - (iii) The persons so excluded were not noticed to show cause against their exclusion ?
  - (iv) The Electoral Roll of 1950 was not reprinted with all the amendments ?
  - (v) As a result of these irregularities persons shown in list No. 7 attached to the petition were deprived of their right of franchise, and also of their right to stand as candidates for the Election ?

Were prepared in accordance with law.
- B. Has the Tribunal no jurisdiction to enquire into these irregularities ?
 

It has in certain cases
- C. (i) Should such objections have been raised before the prescribed authority during the prescribed time ?
 

Not necessary.
- (ii) If so, what is its effect ?
- D. Whether these irregularities, if any, have materially affected the result of the Election ?
 

No irregularities proved. Election has not been materially affected.
3. A.
  - (i) Was Ramchandra Pujari paid Rs. 15/- on 31-5-1953 at the Pagara Police Station by Respondent No. 1, s Polling agent, Rai Debi Prashad ? No.
  - (ii) Was Jiwan Singh paid Rs. 10/- by the same agent at Pagara on the same day ? No.
  - (iii) Was Hari Shanker of Chandrapur paid Rs. 2/- by Mangal Singh Thakur, Polling agent of the Respondent No. 1 at the Polling Station at about 2 P. M. on the Polling day ? No.
- B. If so, what is their effect ?
 

Does not arise.
- 4.—A. Did Respondent No. 1 convene the meeting dated 29-5-1953 and whether the persons present in the said meeting were made to take an oath of Deity Beharaji to cast their votes in the box bearing the symbol of Nisheni on threat of divine displeasure ? No.
- B. If so, what is its effect ?
 

Does not arise.
5. (a) Whether at Dhand and Bina Polling Stations the Respondent No. 1 and his agent Suganchand Mehta with the assistance of Puranchand Samciya brought voters in the hired or procured motor-vehicle No. M. P. S. 92 right into the compound of the Polling Stations ? No.
- (b) If so, what is its effect ?
 

Does not arise.
- (a) Were the voters when they were inside the compound of the Polling Station told by Suganchand Mehta to cast their votes in the box having the symbol of the Nisheni (ladder) ? No.
- (b) If so, has this affected the result of the election materially ? No.
7. (a) Was the return of the Election Expenses lodged by the Respondent No. 1 not in accordance with the prescribed rules as alleged by the petitioner ? It was in accordance with the prescribed rules.
- (b) If so, what is its effect ?
 

Does not arise.
8. (a) Whether Respondent No. 2's nomination paper was improperly accepted because on the date of nomination his name was on the list of approved P. W. D. Contractors ? Properly.

*Issues**Finding*

- (b) If so, what is its effect? . . . . . Does not arise.
- 9(a) Whether Respondent No. 2 paid Rs. 50/- to one Lalsingh Chamar at Khurai on 31-5-1953 for giving his votes, and procuring for Respondent No. 2 the votes of other Chamars? No.
- (b) If so, what is its effect? . . . . . Does not arise.
- 10-A
- (i) Whether Respondent No. 2 and his supporters and canvassers made a systematic appeal to the Chamar voters of the Constituency to vote only for the Respondent No. 2 who was Chamar and not to vote for anyone else? No.
- (ii) If so, whether this has materially affected the result of the Election? Does not arise.
- B (i) Whether the election was as a result of these corrupt and illegal practices not a free election? It was a free election.
- (ii) Whether it should be wholly declared void? . . . . . No.
- 11(a) Did Respondent No. 2 threaten the Chamar electors through Mukhias already named to vote for him on pain of excommunication, ostracism, and withdrawal of caste privileges? No.
- (b) If so, what is its effect? . . . . . Does not arise.
12. Whether the elections of both the candidates should be declared void even if the election of only one of them is held to be so? Does not arise.

*Reasons for the Findings*

6. Issue No. 1.—The main question covered by the 3 parts of this issue relates to limitation. According to the Respondents 1 and 2, the present petition being against the election of the 2 returned candidates, is governed by Rule 119(a) of the Representation of People (Conduct of Elections and Election Petitions) Rules, 1951. Under the said Rule, a petition is required to be presented not later than 14 days from the date of the publication of the notice in the official Gazette under rule 113 that the return of Election Expenses of such candidate and the declaration made in respect thereof have been lodged with the Returning Officer. The date of publication of the notice was 6th June 1953, and this petition was filed on 17th September 1953, and therefore, it was barred by time. It was argued by the learned counsel for the respondents that the election of each of the two candidates in this double member Constituency is a separate election and the petitioner has sought to question the election of each of them by this petition.

7. On the other hand, it was contended on behalf of the petitioner that Rule 119(b) would apply, because in this case there are more returned candidates than one and the election petition calls in question the election as a whole, and therefore, the time allowed would be 60 days from the expiration of the time specified for lodging of the returns under rule 112(1). In other words the petitioner contends that a period of 105 days would be available from the date of publication under Section 67 of the result of the election. The result of election was published on 6th June 1953. This petition having been presented on 17th September 1953, it is said to be within time.

8. The Rule 119 broadly divides election petitions into two classes for the purpose of limitation. The first category refers to a single "returned candidate" [sub-rule (a)]. The second refers to "more returned candidates" than one at an election [sub rule (b)]. It may be noted that in sub-rule (a) there is no reference to the nature of the relief which can be claimed under Section 84 of the Representation of People Act (1951) in an election petition. It is pertinent to reproduce Section 84 which stands as follows:—

"84. Relief that may be claimed by the petitioner:—

A petitioner may claim any one of the following declarations:—

- (a) that the election of the returned candidate is void;
- (b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected;
- (c) that the election is wholly void.

9. These two broad categories are simple enough as far as they go in relation to the number of returned candidates. But the words "and the election petition calls in question the election as a whole" following the first sentence referring to the number of candidates in sub-rule (b) have been subjected to differing interpretations in this case. The petitioner contends that these words envisage a case in which it is claimed that the election should be declared wholly void. In fact, on the basis of this interpretation, para. 7 of the petition has been phrased and relief has been claimed accordingly. Another view that the phrase propounded is "calls in question the election as a whole" does not cover the relief asked for in this case and should be interpreted as referring to the relief which can be claimed according to Section 84(a), that is, to the declaration that the election of the two candidates is void. On this reasoning it is urged that this petition does not fall within the ambit of sub-rule (b) and is therefore, barred by time. The argument, if accepted, would mean that Rule 119 does not embrace a case of this type at all and that in fact the law has omitted to provide limitation for a case in which there are more returned candidates than one and the election is sought to be declared as wholly void. This view runs counter to the accepted canon of interpretation of Statutes that the words of a Statute, when there is a doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the Enactment and the object which the Legislature had in view. The Rule 119 is a part of the law of Election and has been framed to prescribe limitation for election petitions as provided in Section 81 of the Representation of People Act, 1951. It is on a par with a Statute of limitation and should be interpreted similarly. We, therefore, hold that the words "calls in question the election as a whole" in sub rule (b), of Rule 119 embraces the relief claimed in this case.

10. It is further urged on behalf of the Respondents that more allegations in the petition do not suffice for the purpose of determining the question of limitation and that the evidence for proving these allegations should be considered. Normally in considering whether a particular remedy is barred, one looks not at the relief given but at the cause of action, that is, at the necessary allegations which have to be made and found before the relief sought can be given. In this case, all that we have to do is to find one of the two categories into which this petition can be fitted. We have no hesitation in holding that this petition falls within the ambit of sub-rule (b). We cannot and should not go beyond the plain and unambiguous language of this rule and read into it something which it does not contain for determining the question of limitation. We, therefore, hold that this petition is within time.

11. *Issue Nos. 2(A) and (D).*—According to the petitioner, the Electoral Roll, particularly the one relating to Bamora Circle on the basis of which the bye-election was held, was not prepared in accordance with law, because,

- (1) the Electoral Roll of 1950 was not kept intact;
- (2) the list of amendments showing the names of persons excluded from the Rolls was not published;
- (3) the persons excluded from the list were not noticed to show cause against their exclusion;
- (4) the Electoral Roll of 1950 was not reprinted together with all the subsequent amendments.

This is alleged to have materially affected the result of the bye-election.

12. The first Electoral Rolls were prepared in 1950. Under Section 23 of the Representation of People Act of 1950, the Electoral Roll for each Constituency is required to be prepared every year in the manner prescribed. Rules 3 to 21 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1950, lay down the manner in which the Electoral Rolls are to be prepared annually. Under Rule 22 of the said Rules, the Election Commission has been authorised to issue certain directions for the preparation of these annual Electoral Rolls. Under the proviso to Section 23 of the Representation of the People Act of 1950, it was not necessary to prepare any roll during the year 1951, and consequently, a fresh Electoral Roll was not prepared for that year. The Election Commission had issued directions under Rule 22 for the preparation of the annual Electoral Rolls for each of the five years beginning from 1952 to 1956. Ex. B3 is the copy of the said instructions.

13. According to the directions, the annual revision was to be intensive over one-fifth of the area of each Constituency; and in the area in which there was to be intensive revision, enquiry was to be made from house to house. It is not disputed that Bamora Circle was included in the one-fifth area in which the revision

was made intensively, i.e. by making enquiries and going from house to house. As per instructions given by the Election Commission, enquiries were made intensively in the area in question and the entire Electoral Roll relating to this area was prepared anew and printed.

14. Ordinarily, under Rule 22, the old Electoral Roll and the List of amendments showing the change should be reprinted so as to show separately the old Roll and the amendments; but the Proviso appended to sub-clause (3) of Rule 22 also permits the printing of the entire new Roll including the amendments. The manner in which the Electoral Roll relating to Bamora Circle was prepared was in accordance with the Rules and the instructions issued by the Election Commission. We do not find any irregularity or illegality in the preparation or publication of this Roll.

15. According to the Petitioner, the names of about 15 persons were excluded from the new Roll, and, each of them was not served with a separate notice calling upon him to show cause for or against the removal of his name. The learned counsel for the Petitioner was unable to point out any provision of law which required a separate notice to each individual person whose name was added or excluded. Under Rule 10, a notice in Form V is required to be published after the preparation of the new Roll; and the printed form No. V shows that it is a notice in general to all the voters in the area. All that is required is that a new Roll after its preparation is to be published by means of a notice in form V. We presume that notice in Form V was published as it is not alleged by the Petitioner that it was not done. It is an official act and we are justified in presuming that it was done in the manner required by law. We find, therefore, that there was no irregularity in the preparation or publication of the Electoral Roll; and that no separate notice was required to the persons whose names were excluded.

16. Assuming that certain irregularities were committed in the manner of preparation and publication of the new Electoral Roll, we find that the result of the Election has not been materially affected. The total number of voters in the Bamora Circle was about 1000, out of which the names of 15 persons were excluded from the new Electoral Rolls. Assuming further that all the voters in this Circle had cast their votes in favour of the Petitioner, the number of votes secured by him would come to 5730 plus 1000 i.e. 6730. The number of votes secured by the Respondent No. 2 (who was the rival of the petitioner) is 7100. It is, therefore, clear that the result of the Election has not been materially affected.

17. *Issue No. 2(B).*—Ordinarily the Tribunal will have no jurisdiction to enquire into the irregularities committed in the manner of preparation and publication of the Electoral Roll. But it would certainly have jurisdiction in the matter if non compliance with the provisions of any rules or orders made under this Act is said to have materially affected the result of the Election. This is covered by Section 100(2)(c) of the Representation of People Act. We, therefore, hold that the Tribunal has jurisdiction to enquire into this question.

18. *Issue No. 2(C).*—In view of our findings on issue No. 2(A) and (D), it is not necessary to record a finding on this issue.

19. *Issue No. 3.*—No evidence was led on the question and the learned counsel for the Petitioner conceded that he has not been able to prove it. We consequently hold that Ramchandra Pujari, Jiwan Singh and Hari Shanker of Chandrapur were not bribed by the Respondent No. 1 as alleged in the petition.

20. *Issue No. 4.*—No evidence has been led on this question also and consequently we hold that the alleged corrupt practice (as shown in the issue), has not been proved.

21. *Issues 5 and 6.*—According to the Petitioner, Suganchand Mehta who was the Polling Agent of the Respondent No. 1 at one of the Polling booths at Bina had brought certain voters in motor-car No. C.P.S. 92 to the polling booth at village Dhand with the connivance of the Respondent No. 1; and thus the Respondent No. 1 was guilty of a major corrupt practice as described in sub-clause (6) of Section 123 of the Representation of the People Act.

22. On this point, 3 witnesses viz., P.W. 4 Puranchandra, P.W. 5 Sharda Prashad and P.W. 8 Mithulal have been examined for the Petitioner and 2 witnesses viz., R.W. 2 Amrit Singh and R.W. 3 Suganchand for the respondents. Mithulal is the Patel of village Bamora, and, therefore, he was present during the polling hours at the polling station on that day. Puranchandra keeps a petty grain-shop in front of the school building in which the polling booth was located. The allegations in the petition were that Puranchandra and Suganchand had both carried

voters in hired vehicles to the polling booth. The story was slightly improved in evidence. Puranchandra who was said to be one of the culprits was absolved of the guilt and then called to give evidence against the other culprit. According to Puranchandra, Mithulal and Shardaprashad, a bus containing 10 or 12 persons had arrived at the Polling booth Dhand at about 3 P.M.; it stopped just close to the raised platform (*chabutra*) on which the polling booth was located; 10 or 12 persons alighted from the Bus, and 4 or 5 of them entered the polling booth and others went away. Shardaprashad was the driver of the bus. It was admitted by the learned counsel for the respondent that Shardaprashad had brought a motor-car for respondent No. 1 from Jabalpur for the election work of the respondent No. 1. The expenses incurred by the Respondent No. 1 in connection with the stay of Shardaprashad and bringing the car from Jabalpur to this Constituency, are noted in the Return of the Election Expenses, a copy of which is filed on record. It is thus clear that Shardaprashad was in the Constituency with his vehicle from the 22nd to the 31st May 1953.

23. Amrit Singh was admittedly the polling agent of the Respondent No. 1 at the polling station Dhand and Suganchand was the polling agent at Bina. The distance between these two places is 12 miles of fair weather road. Suganchand and Amritsingh have both stated that Suganchand had not arrived at the polling station Dhand carrying with him 10 or 15 persons. It was further disclosed by them that the car brought by Shardaprashad went out of order and was lying at Bina near a temple. This does not appear to be probable, because if the car had gone out of order, immediate steps would have been taken to put it in running order and if it was not possible to put the car in running order, Sharda Prashad would not have been detained till the 31st. His detention till the 31st (as is shown by the entry in the Return of Election Expenses) indicates that his services were being utilized; and it, therefore, seems probable that a vehicle in running order was there.

24. We gather from the evidence of Amrit Singh and Suganchand that polling at each station *viz.*, Bina and Dhand was nearly at a close by about 3 P.M. It, therefore, seems quite probable that Suganchand may have moved in a vehicle from Bina to Dhand after the work at his station at Bina was finished. Suganchand has his residential house at Dhand and it is adjacent to the school building in which the Polling booth was located. It seems, therefore, quite probable that after the work was finished at Bina, Suganchand and few others had travelled in a car from Bina to Dhand and the Bus carrying these persons had stopped in front of the house of Suganchand. A vehicle coming along the road and proceeding to the house of Suganchand must necessarily pass by the side of the *Chabutra* on which the Polling Booth was located. We, therefore, accept the evidence of Sharda-prashad and hold that a bus had arrived carrying in it Suganchand and a few other persons and it had stopped somewhere on the way, between the main road, and Suganchand's house.

25. But the arrival of a bus with a few persons will not be sufficient to show that voters were carried in a hired vehicle. If the persons who had travelled in the bus at the time were voters in the area, Mithulal, a patel of the village, and Puranchandra, a shop-keeper, would have known atleast a few of them. Sharda-prashad being a stranger cannot be expected to know any of those persons; but in our opinion, Mithulal and Puranchandra have deliberately pretended ignorance about the persons whom they saw alighting from the car. If they had disclosed the names, it would not have been difficult for us to find out from the official records, whether any of those persons had cast their votes on that day. Mithulal and Puranchandra have, therefore, deliberately introduced a falsehood by stating that they did not remember the name or the identity of anyone of those persons who had arrived there in the car.

26. According to Mithulal and Puranchand, Mithulal gave a written complaint to the Presiding Officer when the bus had arrived and stopped just close to the *Chabutra* of the Polling Booth; the Presiding Officer ordered the Bus to be taken away; and as the Bus was immediately removed therefrom, the paper containing the complaint was torn off by the Presiding Officer. We find it extremely difficult to believe this story. If a written complaint were made to the Presiding Officer, there is no reason why he should have destroyed that paper. Moreover, according to the evidence of Mithulal himself, the complaint was that a vehicle was brought within the prohibited area. There was no complaint that voters were brought in a hired vehicle. If Mithulal knew that bringing of a vehicle within the prohibited area was not permissible, he will certainly be deemed to have known that carrying voters in a hired vehicle was a much more serious matter, and if voters were really brought in the said vehicle, Mithulal would not have failed to make a written complaint about it to the Presiding Officer. Besides, it

is extremely difficult to believe that in a hotly contested election, voters would be carried in a vehicle right upto a polling booth in such an audacious and reckless manner as to attract the attention of all concerned. The truth seems to be as disclosed by Shardaprashad, namely, that a few persons including Suganchand had travelled in the bus from Bina to Dhand that day and the bus had stopped near the *chabutra* and then it was removed therefrom.

27. As we have indicated above, after the work at Bina was nearly finished, Suganchand had perhaps gone to his house at Dhand along with a few other persons not necessarily the voters. We, therefore, hold that it is not proved that a hired vehicle was used for the conveyance of any voter by Suganchand with the connivance of the Respondent No. 1 and consequently the coming of the vehicle with Suganchand and few others and its stopping near the polling booth within the prohibited limits, does not constitute a corrupt practice as defined in Section 123 sub-clause (6) of the Act.

28. *Issue No. 7.*—According to the Petitioner, the Return of Election Expenses filed by the Respondent No. 1 was false, because it did not include the cost of petrol etc. for the journey of the motor-vehicle CPS 92 from Bina to Dhand at about 3 p.m. on 31st May 1953. Suganchand was the polling agent of the respondent No. 1 at Bina and he had left the polling station after the work there was practically finished. The cost incurred for the journey made by Suganchand from Bina to his house at Dhand in the car driven by Shardaprashad will, in our opinion, not be an item which could be included in the Election Expenses. It was an expense incurred by one of the polling agents after the election was over and after the duty of the polling agent Suganchand was finished. We are not, therefore, prepared to accept that failure to include the cost of the journey of this vehicle from Bina to Dhand on that day was an item of expenditure in Election Expenses and consequently we hold that the Return of the Election Expenses is not false.

29. *Issue No. 8.*—The name of the Respondent No. 2 was admittedly on the list of approved P.W.D. Contractors at the time of his Nomination, and, merely because his name was on the list, it was alleged that he was disqualified for membership of the State Legislature under sub-clause (d) of Section 7 of the Representation of the People Act. Under the said sub-clause, a person is disqualified if he has any share or interest in a contract for the supply of goods to, or for the execution of any works, or the performance of any services undertaken by the Government. In the present case, by allowing his name to be retained on the list of approved contractors, the Respondent No. 2 cannot be said to have any share or interest in a contract for the supply of any goods to the Government; nor any interest or share in a contract for the execution of any work undertaken by the Government. We hold, therefore, that the Respondent No. 2 was not disqualified in any manner.

30. *Issue No. 9.*—No evidence has been led on this point and we hold that Lal Singh Chamar was not bribed as alleged.

31. *Issue Nos. 10 and 11.*—According to the Petitioner, a systematic appeal to the Chamar voters was made on the ground of caste. They were asked to vote only for a Chamar and a threat was given to them that if they failed to vote for the Respondent No. 2 who was a Chamar, they would be ex-communicated. There is no evidence to show that the Respondent No. 2 who was a Chamar, they would be ex-communicated. There is no evidence to show that the Respondent No. 2 or any of his supporters had made a systematic appeal to the Chamar voters.

32. In respect of the threat of ex-communication, it was alleged that the threat was given through the Mukhias of the community. P.W. 1 Punuwa was said to be one of such Mukhias, but in his cross-examination he admitted that he was not a Mukhia. P.W. 2 Kishora who was said to be a Mukhia was not prepared to support the Petitioner. We were convinced that P.W. 2 was won over and that was the reason why he was not prepared to disclose the truth. Be that as it may, the fact remains that we are left with the evidence of the solitary witness P.W. 1 Punuwa who stated that on the day of polling, a meeting was held in which there were 5 or 10 Chamars and that they were asked to vote for the Chamar candidate, failing which they would be ex-communicated.

33. In List No. 6, appealed with the petition, 4 persons *viz.*, Halke, Bhaddiram, Kishora and Punuwa have been named as the Mukhias through whom a threat was given to the Chamar voters to vote for the Chamar candidate on pain of ex-communication. Out of these 4 persons, P.W. 1 Punuwa said he was not a Mukhia. Kishora was not prepared to support the Petitioner and the remaining two were not examined. If a systematic appeal were made to the Chamar community, it



would not have been difficult for the petitioner to produce before us atleast a few of them to prove that such an appeal was made and that the appeal was also coupled with a threat of ex-communication. P.W. 1 Punuwa is a very old servant of Shri Selot, a staunch Congressman in the Constituency. Shri Selot was in the court-room when Punuwa gave evidence. According to P.W. 2 Punuwa's evidence, it was the respondent No. 2 Pyarelal who had given a threat of ex-communication. He did not say that any Mukhia had given a threat. He further added that Pyarelal was not regarded as a Mukhia. In these circumstances, we find it extremely unsafe to rely on the sole testimony of this witness and to hold that a threat of the kind alleged was given to the Chamar voters. We hold, therefore, that the petitioner has failed to prove that a systematic appeal to vote on the ground of caste or religion was made or that a threat of ex-communication was given to voters.

34. *Issue No. 12.*—The result, therefore, is that the Petitioner has failed to establish anything that will justify the declaration that this bye-election was wholly void or that the election of any one of the two returned co-ordinates was void. Consequently, the petition must fail and it is hereby dismissed.

35. Since we have reached the conclusion that the petition be dismissed, we should ordinarily have ordered the petitioner to pay the costs of the respondents 1 and 2, but we are not so inclined in this case because we are convinced that the witnesses summoned by the Petitioner were tampered with. That the witnesses were tampered with or won over was demonstrated by P.W. 2 Kishora when he was in the witness box. Kishora went to the length of deposing that he did not know the Respondent No. 2 at all, a fact which he himself demonstrated by his conduct to be false. The petitioner had summoned nearly 25 witnesses out of whom only 8 were examined. He would not have summoned these witnesses without first ascertaining from them whether they were going to support him or not. They were summoned, they had appeared, but they had to be given up. The process of giving up was followed after the witness No. 2 had demonstrated in Court that he was won over. In these circumstances, we are inclined to believe that the Respondents 1 and 2 had a hand in tampering with the witnesses of the Petitioner. Besides this the respondents 1 and 2 have not conducted themselves in this case, in a manner helpful to the cause of justice. Therefore, we are not inclined to allow them their costs. We would have allowed Rs. 300/- as counsel's fee if costs were allowed.

#### ELECTION TRIBUNAL, JABALPUR, AT SAGAR.

##### ELECTION CASE No. 1 OF 1953.

##### Schedule of Costs

	Petitioner	Respdt. No. 1	Respdt. No. 2	Respdt. Nos. 3 & 5	Respdt. 4 & 6
1. Petitions and affidavits	3 0 0	10 0 0	2 0 0	..	..
2. Power	3 0 0	3 0 0	1 0 0	1 0 0	Nil.
3. Writing charges	3 10 0	14 6 0	..	..	..
4. Process-fecs	25 4 0	15 0 0	6 0 0	..	..
5. D.M. to witnesses	107 2 0	85 15 0	22 4 0	..	..
6. Pleader's fees fixed	300 0 0	300 0 0	300 0 0	..	..
<b>TOTAL</b>	<b>438 0 0</b>	<b>428 5 0</b>	<b>331 4 0</b>	<b>1 0 0</b>	<b>Nil.</b>

(Sd.) G. A. PHADKE, Chairman.

(Sd.) G. L. SHRIVASTAVA, Member

(Sd.) R. D. DOONGAJI, Member

The 26th April, 1954.

[No. 82/19/53/9380.]

By Order,

D. J. SENGUPTA, Asstt. Secy.

